

APPEAL NO. 022131
FILED OCTOBER 8, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 23, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter, from May 10 through August 8, 2002. The appellant (carrier) appealed on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Reversed and remanded.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant contended that he had no ability to work during the qualifying period in dispute. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer made findings of fact that the claimant is unable to perform any form of manual labor involving lifting; that the claimant's treating doctor, in his report dated July 23, 2002, detailed why the claimant was unable to work or even look for work during the qualifying period for the first quarter; and that no other record offered at the proceeding showed that the claimant has an ability to work. It is apparent that the hearing officer imposed a standard that is not found in Rule 130.102(d)(4) when he determined that the "Claimant is unable to perform any form of manual labor involving lifting." The standard set forth in Rule 103.102(d)(4) is that the claimant "has been unable to perform any type of work in any capacity." The hearing officer thus applied a limited and restricted standard that is not found in Rule 130.102(d)(4).

We reverse the hearing officer's finding of fact regarding ability to work and remand for the hearing officer to consider the evidence of record when applying the correct standard found in Rule 130.102(d)(4) and then to determine whether the claimant is entitled to SIBs for the first quarter.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude

Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Veronica Lopez
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge